

10/692,216MS306454.01/MSFTP518US**REMARKS**

Claims 1-40 are currently pending in the subject application and are presently under consideration. Claims 1, 3, 17, 24, 25, 27, 33, 36, 38 and 40 have been amended as shown on pp. 3-9 of the Reply. In addition, the specification has been amended as indicated on p. 2.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments, amendments, and the terminal disclaimer herein.

**I. Objection of Claims 3, 17, 18, 24, 25, 36 and 40**

Claims 3, 17, 18, 24, 25, 36 and 40 are objected to because of the following informalities: The phrase "one or more of the" needs to be replaced by –one or more of the following:--. The claims have been amended to rectify the minor informalities identified by the Examiner. Accordingly, withdrawal of the rejection is requested.

**II. Rejection of Claims 1-40**

Claims 1-40 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent Application Serial Nos. 10/692,432; 10/693,838 and 10/789,440. Withdrawal of this rejection is respectfully requested in view of the Terminal Disclaimer filed herewith.

**III. Rejection of Claim 33 Under 35 U.S.C. §112**

Claim 33 stands rejected under 35 U.S.C. §112, second paragraph, for having insufficient antecedent basis for the limitation "system administrator". Dependent claim 33 has been amended to rectify the minor informality identified by the Examiner. Accordingly, withdrawal of the rejection is requested.

**IV. Rejection of Claims 1-22, 24-25 and 36-37 Under 35 U.S.C. §101**

Claims 1-22, 24-25 and 36-37 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Examiner contends, "Such claimed matter... is not statutory because it is not a physical 'thing' nor a statutory process as there are not 'acts' being performed." (See Office Action dated August 19, 2005, pg. 7-8). Applicants' representative respectively disagrees. The subject claims 1, 24 and 36 clearly pertain to software code

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comprising a description component, an application or service, constituent components, desired states, and a management service component that uses the description component during installation of the application or service to configure itself. The fact that the components are software components (e.g., that they are not "physical things") is irrelevant to the fact that applicants' claimed invention relates to a system for configuring software components that are incorporated into computer programs. Pursuant to *Eolas v. Microsoft*, software code alone qualifies as an invention eligible for patenting.

This court must also decide whether software code made in the United States and exported abroad is a "component of a patented invention" under 271(f)... Section 271(f) refers to "components of a patented invention."... Title 35, section 101, explains that an invention [\*1339] includes "any new and useful process, machine, manufacture or composition of matter."... *Without question, software code alone qualifies as an invention eligible for patenting* under these categories, at least as processes. *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1338-39 (Fed. Cir. 2005) (emphasis added).

Further, independent claims 1, 24 and 36 have been amended herein to clearly illustrate that elements within such claims are associated with a computer. In particular, claim 1 as amended is directed towards a *computer implemented* model-based management system, comprising the following *computer executable components*, wherein such components perform a function (e.g., describe the application in terms of its constituent components and employ the description at installation to configure management services). Management services help ensure availability of the application through automatic management actions, such as configuration management, problem detection, diagnosis, and recovery. (See page 3, paragraphs [0012]-[0013]). Accordingly, this claim includes functional descriptive material within a computer, thereby rendering it structurally and functionally interrelated to the computer and is therefore directed to statutory subject matter. Claims 24 and 36 have been similarly amended.

Because the claimed process applies the Boolean principle [abstract idea] *to produce a useful, concrete, tangible result* ... on its face the claimed process comfortably falls within the scope of §101. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358. (Fed.Cir. 1999) (Emphasis added); *See State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed.Cir.1998).

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Furthermore, it is readily apparent that these claims, as well as independent claim 1, recite independent acts to produce a useful, tangible, and concrete result. In particular, the system *describes the application or service in terms of its constituent components and employs this description at installation to configure management services*. Accordingly, claims 1, 24 and 36 produce at least the aforementioned useful, concrete, and tangible results. Accordingly, this rejection should be withdrawn.

**V. Rejection of Claims 1-17 and 21-40 Under 35 U.S.C. §102(b)**

Claims 1-17 and 21-40 stand rejected under 35 U.S.C. §102(b) as being anticipated by Ravindran, *Engineering Dynamic Real-Time Distributed Systems: Architecture, System Description Language, and Middleware*, January, 2002 (hereinafter ‘Ravindran’). This rejection should be withdrawn for at least the following reasons. Ravindran does not disclose or suggest each and every limitation set forth in the subject claims.

*A single prior art reference anticipates a patent claim only if it expressly or inherently describes each and every limitation set forth in the patent claim. Trintec Industries, Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); See Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).*

Applicants’ subject claims relate to a model-based management system and method that employs the developer’s description or model at the time of installation and during management of the system. In particular, the subject claims relate to describing the application or service in terms of its constituent components or desired states. To this end, independent claims 1, 24, 27, 36, 38 and 40 recite similar claim limitations, namely: *a model-based management system for managing an application or service, comprising: a description component that describes the application or service in terms of its constituent components, and desired states in terms of at least one of functionality, configuration, system resource utilization, security, and performance; and a management service that uses the descriptive component during installation of the application or service to configure itself*. Ravindran does not disclose or suggest these novel aspects of the invention as claimed.

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More particularly, Ravindran does not disclose or suggest *a description component that describes the application or service in terms of its constituent components*, as recited in independent claim 1 (and similarly independent claims 24, 27, 36, 38 and 40). Ravindran discloses a resource management architecture and algorithms for engineering dynamic real-time distributed systems. A system description language is used to describe the structural composition and interconnections of the system, the timeliness and survivability requirements of the system as desired quality of service (QoS). An abstract model of the system is automatically constructed from the language specifications and is augmented with dynamically measured performance characteristics of the system by a language runtime system. The abstract model is an intermediate representation (IR) that is independent of the programming language used to develop the application. Resource management monitors the application at run-time to achieve the timeliness and survivability requirements needed. (See Introduction and Sections 5 and 7).

It would appear that Ravindran merely discloses a resource management system that facilitates the timeliness and survivability of the dynamic real-time system. According to Ravindran, the resource management system decentralizes regulatory control by providing an abstract model that is independent of the application and underlying hardware platform, such that timeliness and survivability can be met without significant changes to the application and underlying computing platform. Ravindran does not disclose *a description component that describes the application or service in terms of its constituent components*, but merely discloses managing the system such that acceptable levels of QoS can be achieved independent of the application and underlying hardware platform.

In contrast, applicants' claimed invention provides for a model-based management system that provides an innovative framework that enables a developer to describe an application or service in terms of its components. The developer can describe desired states of the application or service in terms of functionality, configuration, security, and performance. *This description or model is provided with the application and used by the system at installation to configure the management services.* The management services help ensure availability of the application through automatic management actions, such as configuration management, problem detection, diagnosis, and recovery. (See page 3, paragraphs [0012]-[0013]). Accordingly, Ravindran fails to teach or suggest a model-based management system for managing an application or service, comprising: *a description component that describes the application or*

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*service in terms of its constituent components...; and a management service that uses the descriptive component during installation of the application or service to configure itself.*

Furthermore, Ravindran is silent with respect to using *the descriptive component during installation of the application or service to configure itself*, as claimed in independent claim 1 (and similarly independent claims 24, 27, 36, 38 and 40). As stated above, Ravindran discloses an abstract model of the system that is automatically constructed from the language specifications and is augmented with dynamically measured performance characteristics of the system by a language runtime system. The abstract model is an IR that is independent of the programming language used to develop the application. Resource management monitors the application at run-time to achieve the timeliness and survivability requirements needed. (See Introduction and Sections 5 and 7). Accordingly, it would appear that the system disclosed in Ravindran has the application *installed prior* to the system description language compiling the model. Thus, Ravindran is silent with respect to using *the descriptive component during installation of the application or service to configure itself*.

In view of at least the above, it is readily apparent that Ravindran fails to expressly or inherently disclose applicants' claimed invention as recited in independent claims 1, 24, 27, 36, 38 and 40 (and claims 2-17, 21-23, 25-26, 28-35, 37 and 39 which respectively depend there from). Accordingly, it is respectfully requested that these claims be deemed allowable.

#### VI. Rejection of Claims 18-20 Under 35 U.S.C. §103(a)

Claims 18-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ravindran in view of Berners-Lee, *et al.* ("BL98"), Uniform Resource Identifiers (URI): Generic Syntax, August 1998. It is respectfully submitted that this rejection should be withdrawn for the following reasons. Ravindran and Berners-Lee, *et al.*, individually or in combination, do not teach or suggest each and every element set forth in the subject claims. In particular, Berners-Lee, *et al.* does not make up for the aforementioned deficiencies of Ravindran with respect to independent claim 1 (which claims 18-20 depend there from). Thus, the subject invention as recited in claims 18-20 is not obvious over the combination of Ravindran and Berners-Lee *et al.*, and withdrawal of this rejection is requested.

10/692,216MS306454.01/MSFTP518US**CONCLUSION**

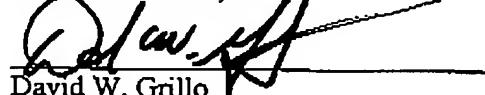
The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP518US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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